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INTERSTATE COMMERCE COMMISSION

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**NORTH AMERICAN CAR (CANADA) LIMITED**

**AND**

**MONTREAL TRUST COMPANY**

**TRUSTEE**

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— ♦ —  
**DEED OF TRUST AND MORTGAGE**

**SECURING**

**DEMAND EQUIPMENT DEBENTURES, FIRST 1971 SERIES**

— ♦ —

*Dated as of July 1, 1971*

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**THIS DEED OF TRUST AND MORTGAGE** made as of July 1, 1971.

**BETWEEN:**

NORTH AMERICAN CAR (CANADA) LIMITED, incorporated under the laws of the Province of Ontario, Canada (hereinafter called the "Company")

Of the First Part

— and —

MONTREAL TRUST COMPANY, a trust company duly incorporated and authorized to carry on the business of a trust company in all provinces of Canada (hereinafter called the "Trustee")

Of the Second Part

WHEREAS, the Company deems it advisable for its corporate purposes to create and issue its Debentures to be constituted, secured and issued in the manner hereinafter appearing; and

WHEREAS, the Company under the laws relating thereto is duly authorized to create, issue and secure the Debentures to be issued as herein provided; and

WHEREAS, all things necessary have been done and performed to make the Debentures when certified by the Trustee and issued as herein provided valid, binding and legal obligations of the Company with the benefits and subject to the terms of this Deed of Trust and Mortgage and to make this Deed of Trust and Mortgage valid and binding for the security of the Debentures in accordance with its and their terms;

NOW, THEREFORE, THIS DEED OF TRUST AND MORTGAGE WITNESSETH, and it is hereby agreed and declared as follows:

**ARTICLE ONE**

**INTERPRETATION**

SECTION 1.01. In this Deed of Trust and Mortgage, unless there is something in the subject matter or context inconsistent therewith:

(a) "this Trust Deed", "herein", "hereby" and similar expressions mean or refer to this Deed of Trust and Mortgage and any instrument

supplemental or ancillary hereto; and the expressions "Article" and "Section" followed by a number mean and refer to the specified Article or Section of this Deed of Trust and Mortgage;

(b) "Debentures" means the Demand Equipment Debentures of the Company issued and certified hereunder and for the time being outstanding;

(c) "Debentureholders" or "holders" means as regards the Debentures the several persons for the time being entered in the registry books of the Trustee hereinafter mentioned as holders thereof;

(d) "Company" means the Party of the First Part and also every successor company which shall have complied with the provisions of Section 5.07(b);

(e) "Director" means a director of the Company for the time being, and reference without more to action by the directors means actions by the directors of the Company as a board or, whenever duly empowered, an executive committee of the board;

(f) "Trustee" means the Party of the Second Part or its successors for the time being in the trusts hereby created;

(g) "Written order of the Company" and "certificate of the Company" mean, respectively, a written order and certificate signed in the name of the Company by the president or a vice president and by the secretary or an assistant secretary or the treasurer or an assistant treasurer, or by any one of said officers and a director, and may consist of one or more instruments so executed;

(h) "Certified resolution" means a copy of a resolution certified by the secretary or an assistant secretary of the Company under its corporate seal to have been duly passed by the directors and to be in full force and effect on the date of such certification;

(i) "Mortgaged Equipment" means the Equipment specifically described in Section 3.01 hereof and, unless the context shall otherwise indicate, Equipment in replacement thereof and addition thereto; and "mortgaged premises" means the property and assets hereby or by other instruments supplementary or ancillary hereto, granted, bargained, sold,

ceded, transferred, assigned, mortgaged, hypothecated, pledged or charged by way of a fixed and specific mortgage, hypothec, pledge and charge to and in favour of the Trustee;

(j) "Leases" means all the present or future leases, bailments and agreements to lease or bail all or any of the Mortgaged Equipment made by the Company or any of its predecessors in title as lessor and all present or future agreements whereby the Company or any of its predecessors in title as owners gives any other person a right to use any of the Mortgaged Equipment and all revisions, alterations, modifications, amendments, changes, extensions, renewals, replacements or substitutions thereof or therefor which may hereafter be effected or entered into;

(k) "Lien hereof" means the security constituted hereby or pursuant hereto in any manner whatsoever created;

(l) "Counsel" means a barrister or solicitor (who may be of counsel for the Company) acceptable to the Trustee;

(m) "Affiliate" means any person directly or indirectly controlling, controlled by, or under direct or indirect common control with the Company and a person shall be deemed to control a corporation, for the purpose of this definition, if such person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities, by contract or otherwise;

(n) "Person" means any entity whether natural or artificial; and

(o) "Cost" means the actual cost of Equipment to the Company.

(p) "Engineer's certificate" means a certificate signed by the president or a vice president of the Company, by any other officer or employee of the Company appointed by the Company and approved by the Trustee in the exercise of reasonable care; provided, however, any engineer's certificate required to be delivered hereunder shall be signed by an independent engineer if so requested in writing addressed to the Company and the Trustee by not less than 25% in principal amount of the Debentures then outstanding.

(q) "Equipment" means standard-gauge railroad equipment (other than passenger or work equipment), first put into use on or after August 1, 1968.



(r) "Fair value" shall be determined as follows (and the manner of such determination set forth in any certificate of the Company furnished in respect thereof, including a statement of actual fair value without reference to the provisions of clauses (b) of paragraphs (1) and (2) below):

(1) The fair value of any unit of Equipment worn out, unsuitable for use, lost or destroyed as referred to in Section 4.01 or released by the Trustee as provided in Section 4.02 or valued for the purposes of Section 5.08 shall be deemed to be the greater of (a) the actual fair market value thereof and (b) the Cost thereof (as theretofore certified to the Trustee) less  $1/25$ th of such Cost for each full period of one year elapsed between the last day of the month during which such unit was first put into use (as certified) and the date as of which fair value is to be determined.

(2) The fair value of any unit of Equipment mortgaged to the Trustee as provided in Section 4.01 or 4.02 shall be deemed to be the lesser of (a) the actual fair market value thereof and (b) the Cost of such unit, if new (i.e., not put into use more than twelve months prior to such mortgage), or, in case of any unit of Equipment not new, the Cost thereof, less  $1/25$ th of such Cost for each full period of one year elapsed between the last day of the month during which such unit was first put into use and the date as of which fair value is to be determined.

(s) "Actual fair market value" means the amount which the Company could reasonably expect to obtain in a bona fide sale of the property in question to a person other than an affiliate, less the expenses normally attendant upon such a sale.

(t) "Independent engineer" means an engineer, appraiser or other expert appointed by the Company and approved by the Trustee in the exercise of reasonable care, who (a) is in fact independent, (b) does not have any substantial interest, direct or indirect, in the Company or in any other obligor on the Debentures or in any Affiliate of the Company or any such other obligor and (c) is not connected with the Company or any other obligor on the Debentures or any Affiliate of the Company or any such other obligor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

(u) "Replacement Funds" means cash deposited with the Trustee pursuant to Section 4.01 or Section 4.02.

(v) "Paying Agent" means Harris Trust and Savings Bank, incorporated under the laws of the State of Illinois, U.S.A., and any successor thereof in the City of Chicago, Illinois appointed by the Trustee.

(w) "Investment Securities" means (i) bonds, notes or other direct obligations of Canada or obligations for which Canada's full faith and credit is pledged to provide for the payment of the interest and principal, and (ii) certificates of deposit of or time deposits in banks or trust companies incorporated and doing business under the laws of Canada or one of the Provinces thereof having a capital and surplus aggregating at least \$25,000,000.

(x) "permitted liens" shall mean with respect to any property, real or personal, which the Company owns or shall own or in which it has or shall acquire an interest:

(a) the lien of taxes, assessments or governmental charges which are not at the time delinquent;

(b) the lien of specified taxes, assessments or governmental charges which are delinquent but the validity of which is being contested at the time in good faith by the Company or by the owner of such property, unless thereby in the opinion of counsel any part of or all of such property may be lost or forfeited;

(c) rights reserved to or vested in any municipality or public authority to control or regulate any such property, or to use such property in any manner which has no material adverse effect on the use of such property for the Company's purposes;

(d) liens of employees and laborers for current wages, not yet due, incidental to current operations, and liens of others for current indebtedness, not yet due, incidental to current operations, including maintenance, repair and alteration; mechanics', materialmen's, workmen's, repairmen's, contractors', or engineers' liens, or statutory or other similar liens arising out of the construction or improvement of property or the furnishing of materials or supplies therefor (i) which are not fixed as to amount, or (ii) which have not been filed or perfected pursuant to law against the Company,

or (iii) which are not yet due and payable, or (iv) which are being contested in good faith;

(e) Leases of Mortgaged Equipment referred to in Section 3.01(a) hereof and permitted by the provisions of Section 5.10 hereof and purchase options permitted by the provisions of Section 5.10 hereof; and

(f) this Trust Deed.

(y) Words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.

SECTION 1.02. Every Debenture certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it shall be cancelled or moneys for the payment thereof shall be set aside under Article Eight.

SECTION 1.03. The division of this Deed of Trust and Mortgage into Articles and Sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Trust Deed.

SECTION 1.04. This Trust Deed and the Debentures shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as Ontario contracts.

## ARTICLE TWO

### THE DEBENTURES

SECTION 2.01. The aggregate principal amount of Debentures which may be issued hereunder and secured hereby shall be limited to the sum of \$3,250,000 in lawful money of the United States of America and the principal of the Debentures and the interest thereon shall be payable as hereinafter provided in the form of Debentures set forth in Section 2.03.

SECTION 2.02. The Debentures shall be designated "Demand Equipment Debentures, First 1971 Series" and shall be issuable as fully registered Debentures without coupons in any denomination.

SECTION 2.03. The Debentures and the Trustee's certificate to be endorsed on all Debentures shall be of substantially the following tenor, to-wit:

*(Form of Debenture)*

No.

\$ .....

NORTH AMERICAN CAR (CANADA) LIMITED

(Incorporated under the laws of Ontario, Canada)

Demand Equipment Debenture, First 1971 Series

NORTH AMERICAN CAR (CANADA) LIMITED (herein called the "Company") for value received hereby acknowledges itself indebted and promises to pay to \_\_\_\_\_, or assignee, on demand, the principal sum of \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_) in lawful money of the United States of America on presentation and surrender of this Debenture at the principal office of Montreal Trust Company in Toronto, Canada, or, at the option of the registered holder hereof, at the principal office of Harris Trust and Savings Bank in Chicago, Illinois, United States of America, and to pay interest on the said principal sum from the date of demand at the rate of 10% per annum in like money payable one-half yearly on January 1 and July 1 in each year, and should the Company at any time make defaults in payment of any interest, to pay interest on the amount in default at the same rate in like money at the same places and half yearly on the same dates. Interest thereon shall be payable by check mailed to the registered holder hereof as provided in the Trust Deed and, subject to the provisions of the Trust Deed, the mailing of such check shall satisfy and discharge the liability for interest on this Debenture to the extent of the sum represented thereby.

This Debenture is one of a duly authorized issue of Demand Equipment Debentures, First 1971 Series, of the Company secured by a Deed of Trust and Mortgage made as of the 1st day of July, 1971 (herein called the "Trust Deed") between the Company and Montreal Trust Company, as Trustee. The aggregate principal amount of the Debentures which may be issued under and secured by the Trust Deed is limited to \$3,250,000 in lawful money of the United States of America.

This Debenture and all other Debentures now or hereafter certified and issued under the Trust Deed are secured equally and ratably without priority or preference by the Trust Deed which mortgages and charges to and in favor

of the Trustee by way of a fixed and specific mortgage and charge upon certain equipment described and enumerated in the Trust Deed, which Trust Deed is hereby referred to for full particulars of the security created thereby, the rights of the holders of the Debentures issued thereunder and of the Company and of the Trustee in respect thereof and the terms and conditions upon which the Debentures are issued, secured and held, to all of which the holder of this Debenture by acceptance hereof assents.

Upon compliance with the provisions of the Trust Deed, Debentures may be exchanged for Debentures of other authorized denominations of the same aggregate principal amount and Debentures may be transferred.

This Debenture shall not become obligatory for any purpose until certified by or on behalf of the Trustee for the time being under the Trust Deed.

IN WITNESS WHEREOF the Company has caused its corporate seal to be hereunto affixed and this Debenture to be signed by its proper officers thereunto duly authorized this        day of July, 1971.

NORTH AMERICAN CAR (CANADA)  
LIMITED

By .....  
*Vice President*

(CORPORATE SEAL)

.....  
*Secretary*

*(Form of Trustee's Certificate)*

This Debenture is one of the Demand Equipment Debentures, First 1971 Series, referred to in the Trust Deed within mentioned.

MONTREAL TRUST COMPANY  
*Trustee*

By .....  
*Authorized Signature*

SECTION 2.04. The Debentures shall be under the corporate seal of the Company or a reproduction thereof (which shall be deemed to be the corporate seal of the Company) and shall be signed by the president or a vice

president and by the secretary or an assistant secretary of the Company. The signatures of such officers may be mechanically reproduced in facsimile and Debentures bearing such facsimile signatures shall be binding upon the Company as if they had been manually signed by such officers. Notwithstanding that any of the persons whose manual or facsimile signatures appears on any Debenture as one of such officers may no longer hold office at the date of certification and delivery of such Debenture, any Debenture signed as aforesaid shall be valid and binding upon the Company.

No Debenture shall be issued or, if issued, shall be obligatory or entitled to the security hereof until it has been certified by or on behalf of the Trustee substantially in the form of the certificate set forth in Section 2.03 and such certification by the Trustee upon any Debenture shall be conclusive evidence as against the Company that the Debenture so certified has been duly issued hereunder and is a valid obligation of the Company and is secured hereby.

SECTION 2.05. In case any of the Debentures issued and certified hereunder shall become mutilated or be lost, destroyed or stolen, the Company in its discretion may issue and thereupon the Trustee shall certify and deliver a new Debenture of like date and tenor as the one mutilated, lost, destroyed or stolen in exchange for and in place of and upon cancellation of such mutilated Debenture or in lieu of and in substitution for such lost, destroyed or stolen Debenture and the substituted Debenture shall be in a form approved by the Trustee and shall be entitled to the security hereof and rank equally in accordance with its terms with all other Debentures issued or to be issued hereunder. The applicant for a new Debenture pursuant to this section shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Company and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Debenture so lost, destroyed or stolen as shall be satisfactory to the Company and the Trustee in their reasonable discretion, and such applicant may also be required to furnish indemnity in amount and form satisfactory to them in their reasonable discretion, and shall pay the reasonable charges of the Company and the Trustee in connection therewith.

SECTION 2.06. Debentures may be issued originally in such name or names as may be designated in writing by the Company to the Trustee by order signed by the president or a vice president of the Company. Debentures may from time to time be exchanged by the registered holder thereof upon

surrender thereof duly assigned, for other Debentures of authorized denominations and for like aggregate principal amount. Such exchanges shall be made at the office of the Trustee which may make a reasonable charge therefor. The parties hereto may deem and treat the registered holder of any Debenture as the absolute owner of such Debenture for all purposes and shall not be affected by any notice to the contrary free from all rights of set-off or counter-claim. For any registration of transfer, the Trustee may establish its reasonable requirements and at its option may, and if so requested by the Company shall, require the payment of a sum sufficient to reimburse it for any stamp tax or any other governmental charge connected therewith.

SECTION 2.07. Following the execution and delivery hereof, the Debentures, to the aggregate principal amount of \$3,250,000, shall forthwith be executed by the Company and certified by or on behalf of the Trustee and delivered by it to or upon the written order of the Company.

SECTION 2.08. All or any of the Debentures may be pledged, mortgaged or charged from time to time by the Company as security for advances or loans to or for indebtedness or any other obligation of the Company, and when re-delivered to the Company or its nominees on or without payment, satisfaction, release or discharge in whole or in part of any such advances, loans, indebtedness or obligations, may (except when acquired pursuant to any provision of the Debentures or of this Trust Deed or pursuant to resolution of the directors which provision or resolution requires cancellation and retirement of such Debentures so acquired), before but not after maturity be issued or reissued, pledged or charged, sold or otherwise disposed of from time to time as the Company may think fit, and all such Debentures so issued or reissued shall rank as Debentures secured hereby and shall continue to be entitled, as upon their original issue, to the benefit of all the terms, conditions, rights, priorities and privileges hereby attached to or conferred on Debentures outstanding hereunder.

## ARTICLE THREE

### SECURITY

SECTION 3.01. In consideration of the premises and of one dollar to it in hand paid by the Trustee, the receipt whereof is hereby acknowledged, and to secure the due payment of the principal and any interest of the Debentures

issued and certified hereunder and all other moneys for the time being and from time to time owing on the security hereof and the due performance of the obligations of the Company herein contained, the Company hereby grants, bargains, sells, cedes, transfers, assigns, mortgages, hypothecates, pledges and charges as and by way of a fixed and specific mortgage, hypothec, pledge and charge to and in favor of the Trustee, its successors and assigns:

(a) the following described Mortgaged Equipment:

<u>Number of Cars</u>	<u>Serial Number and Description of Cars</u>	<u>Depreciated Cost</u>
11	Class 111A100W1, 70-ton, 20,000 gallon capacity tank cars. Serial numbers 23961 to 23971 both inclusive	\$ 205,400.86
36	Class 112A340W, 100-ton, 33,900 gallon capacity tank cars. Serial numbers 33255 to 33290 both inclusive	812,823.67
66	Class 112A340W, 100-ton, 33,800 gallon capacity tank cars. Serial numbers 33,215 to 33,254 both inclusive 33,291 to 33,316 both inclusive	1,615,152.43
2	Class LF, 100-ton, 82 foot flat cars. Serial numbers 552 and 553	38,122.02
23	Class LO, 70-ton, 4,350 cu. ft. capacity covered hopper cars. Serial numbers 43,000 to 43,022 both inclusive	479,344.61
		<u><u>\$3,150,843.59</u></u>

subject, however, to the rights of lessees under Leases existing at the date of execution hereof between the Company and lessees of some or all of the Mortgaged Equipment, copies of which existing Leases, certified by the secretary of the Company, have been delivered to the Trustee;

(b) all right, title and interest of the Company as lessor in, to, under or in respect of all rents, proceeds and other moneys now due and payable or hereafter to become due and payable in respect of Mortgaged Equipment under each and every existing Lease and under each and every existing and future guarantee of all or any of the obligations of any lessee under any existing Lease with full power and authority to demand, sue for, recover, receive and give receipts for all rents and other moneys payable hereunder; and

(c) all cash that any time be deposited with or held by the Trustee in accordance with the provisions hereof.



TO HAVE AND TO HOLD the Mortgaged Equipment and all the rights hereby conferred unto the Trustee, its successors and assigns forever, subject, however, to permitted liens, but in trust, nevertheless, for the uses and purposes and with the powers and authorities and subject to the terms and conditions herein mentioned and set forth.

SECTION 3.02. All the Debentures shall rank *pari passu* and shall be secured hereby equally and ratably.

SECTION 3.03. Pursuant to the rights granted in Section 3.01 (b), the Company hereby irrevocably constitutes and appoints the Trustee the attorney-in-fact of the Company for the purposes set forth in said Section 3.01 (b). Any instrument made, executed and delivered by the Trustee on behalf of the Company shall be binding upon the Company and all persons claiming by, through or under the Company, with the same effect as if the Company had itself made, executed and delivered the same.

The Company irrevocably directs all persons now or at any time obligated under each and every existing Lease to pay to the Trustee, at its corporate trust office, all payments due and to become due and all sums assigned pursuant to said Section 3.01 (b).

Any and all rights of the Trustee under this Section 3.03 may be exercised pursuant to or as contemplated by the provisions of this Trust Deed and each and every existing Lease.

SECTION 3.04. (a) The Trustee hereby appoints the Company as its agent and the Company hereby accepts such appointment, to collect and receive all payments due and to become due under the existing Leases; provided that, if an event of default shall happen and be continuing, the Trustee may terminate such agency and such agency shall terminate immediately upon notice of such termination from the Trustee to the Company, and provided further, that prior to receipt of such notice, the Company may make such use of any moneys received pursuant to its agency under this Section 3.04(a) as it would otherwise be entitled to except for the assignment provided in Section 3.01 (b).

(b) The Company, promptly after the execution hereof, shall give notice in writing to all Lessees under all existing Leases of the existence of this assignment which notice shall direct such Lessees, upon receipt of notice from the Trustee, to pay to the Trustee all rentals now or in the future due or owing under any such Lease, such notice to be duly acknowledged by

each such Lessee and both such notice and acknowledgment to be in a form satisfactory to the Trustee. Copies of all such notices and acknowledgements shall be promptly delivered to the Trustee.

SECTION 3.05. The Company hereby covenants and agrees with the Trustee that after the security hereby created shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, it will from time to time execute and do all such assurances and things as the Trustee may reasonably require for facilitating the realization of the Mortgaged Equipment and for exercising all the powers, authorities and discretions hereby conferred upon the Trustee and for confirming to any purchaser of any of the Mortgaged Equipment, whether sold by the Trustee hereunder or otherwise, the title to the property so sold and will give all notices and directions as the Trustee may consider expedient.

SECTION 3.06. These presents are upon this express condition, that if the Company shall well and truly pay to the holders of the Debentures the principal thereof and any interest thereon as the same shall respectively become due and payable and shall also pay all other sums payable hereunder by the Company and secured hereby and shall keep, perform and observe the covenants in the Debentures and in this Trust Deed agreed to be kept, performed and observed by or on the part of the Company, then these presents and the estate and rights hereby granted shall cease and become utterly null and void and the Mortgaged Equipment shall revert to and revest in the Company without any release, acquittance, reconveyance, reentry or other act or formality whatsoever.

#### ARTICLE FOUR

##### DESTRUCTION AND SUBSTITUTION OF MORTGAGED EQUIPMENT APPLICATION OF CERTAIN MONEYS RECEIVED BY THE TRUSTEE

SECTION 4.01. Whenever any of the Mortgaged Equipment shall become worn out, unsuitable for use, lost or destroyed, the Company shall forthwith (a) deliver to the Trustee an engineer's certificate describing such Mortgaged Equipment and stating the fair value thereof, and shall (b) either (i) mortgage to the Trustee hereunder other Equipment having a fair value not less than such fair value or (ii) deposit with the Trustee an amount in cash equal to such fair value. In connection therewith the Company shall comply with the provisions of the second paragraph of

Section 4.02 (with appropriate variations) in so far as they relate to the action taken. Cash deposited with the Trustee pursuant to this Section 4.01 shall be held and applied as provided in the final paragraph of Section 4.02. For all purposes of this paragraph the terms "unsuitable for use" and "unsuitableness for use" shall include any condition in which Mortgaged Equipment is no longer usable for the purpose or purposes for which the same was designed (or an alternate purpose or alternate purposes provided that no material impairment in value shall arise therefrom), whether by virtue of its physical condition or of the effect of any applicable law, rule, regulation or order.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee and at least once within 90 to 120 days after the close of each calendar year, a certificate of the Company stating (i) the number of units of Mortgaged Equipment then included in the mortgaged premises and then in actual service, (ii) the amount, description and numbers of all Mortgaged Equipment that may have become worn out, or that may have become unsuitable for use or lost or destroyed—by accident or otherwise—since the date of the last preceding statement (or the date of this Trust Deed in the case of the first statement), (iii) the number of units of the Mortgaged Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and (iv) that in the case of all the Mortgaged Equipment repainted or repaired since the date of the last preceding statement (or the date of this Trust Deed in the case of the first statement) the plates or marks required by Section 5.09 have been preserved, or that such Mortgaged Equipment when repainted or repaired has been again plated or marked as required thereby. The Trustee may, but shall be under no duty to, request the Company to furnish the Trustee with the description and numbers of the Mortgaged Equipment referred to in such certificate of the Company in compliance with clause (i) or (iii) of the next preceding sentence. Upon receipt of any such request, the Company shall, by certificate of the Company, furnish such information to the Trustee. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Mortgaged Equipment at the then existing locations thereof.

SECTION 4.02. In the event that the Company should become legally bound to sell any unit of the Mortgaged Equipment pursuant to the exercise by any government or any subdivision or authority thereof of any power of condemnation, expropriation or similar power, the Trustee shall, upon written order of the Company, duly release such Mortgaged Equipment for

transfer to such government, subdivision or authority; provided, however, none of the Mortgaged Equipment shall be so released unless simultaneously (a) there shall be mortgaged to the Trustee hereunder other Equipment of a fair value to the Company not less than the fair value, as of the date of such order, of the Mortgaged Equipment so released by the Trustee or (b) there shall be paid to the Trustee cash in an amount not less than the fair value, as of said date, of the Mortgaged Equipment so released by the Trustee.

At the time of delivery of any order pursuant to the first paragraph of this Section 4.02, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Mortgaged Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

- (i) an engineer's certificate stating (a) the fair value, as of the date of said order, of the Mortgaged Equipment so to be released by the Trustee, (b) that such release will not impair the lien hereof in contravention of the provisions hereof and (c) the fair value of such substituted units of Equipment as of such date;

- (ii) a certificate of the Company stating (a) the month and year during which each unit of Mortgaged Equipment so to be released by the Trustee was first put into use (or that such unit was first put into use not later than a specified date), (b) the original Cost of each unit of the Equipment so to be substituted and the month and year during which it was first put into use (or that such unit was first put into use not earlier than a specified date), (c) that each such unit so to be substituted is Equipment as herein defined, (d) that no event of default has occurred and is continuing and (e) that, in the opinions of the signers, all conditions precedent provided for in this Trust Deed, relating to such substitution, have been complied with;

- (iii) a supplemental trust deed entered into pursuant to Section 8.02, warranting that the title to the Equipment so to be substituted is free from all liens, claims and encumbrances other than Leases and subjecting such Equipment to the lien hereof; and

- (iv) an opinion of counsel to the effect (a) that such supplemental indenture is valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee a valid prior perfected security interest in and charge on the Equipment so to be substituted, (b) that such supplemental indenture has been duly executed by the Company and the Trustee and (c) that, in

the opinion of such counsel, all conditions precedent provided for in this Trust Deed with respect to such substitution, including any recording or filing required by Section 5.06(b), have been complied with.

At the time of delivery of any order pursuant to the first paragraph of this Section 4.02, the Company shall, if cash is to be paid to the Trustee in respect of the Mortgaged Equipment to be released by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section 4.02 in so far as they relate to the action requested.

Replacement Funds shall from time to time be paid over by the Trustee to the Company upon written order of the Company against mortgage to the Trustee of Equipment having a fair value, as of the date of said order, not less than the amount of Replacement Funds so paid, and upon compliance by the Company with all of the provisions of the second paragraph of this Section 4.02 in so far as they relate to the action requested.

SECTION 4.03. Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among Montreal banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time no event of default shall have occurred and be continuing, the Trustee, on written order of the Company, shall invest and reinvest Replacement Funds in Investment Securities at such prices, including any premium and accrued interest, as are set forth in such order, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Debentures.

The Trustee shall, on written order of the Company, or the Trustee may, in the event funds are required for payment against mortgage of Equipment, sell such Investment Securities, or any portion thereof, and restore to Replacement Funds the proceeds of any such sale up to the amount paid for such Investment Securities, including accrued interest.

The Trustee shall restore to Replacement Funds out of amounts received by it for that purpose under the provisions of Section 7.02(h), an amount equal to any expenses incurred in connection with any purchase or sale of Investment Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including accrued interest.

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 4.03, or any interest (in excess of accrued interest paid at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

## ARTICLE FIVE

### COVENANTS OF THE COMPANY

SECTION 5.01. The Company covenants that it will well, duly and punctually pay or cause to be paid to every holder of every Debenture issued hereunder the principal thereof and interest accrued thereon (including, in case of default, interest on the amount in default) at the time and places, in the currency and in the manner mentioned herein and in such Debentures. As interest becomes due on each Debenture the Company, either directly or through the Trustee or the Paying Agent, shall send by ordinary mail a cheque for such interest payable to the order of the then registered holder of such Debenture and addressed to him at his last address appearing on the registry books of the Trustee, unless such holder otherwise directs. The mailing of such cheque shall, to the extent of the sum represented thereby, satisfy and discharge the liability for interest on such Debenture, unless such cheque be not paid in accordance with its terms on presentation at one of the places where such interest is made payable by the terms of such Debenture. In the event of non-receipt of any cheque for interest by the person to whom it is so sent as aforesaid, the Company will issue or cause to be issued to such person a replacement cheque for a like amount upon being furnished with such evidence of non-receipt as it shall reasonably require and upon being indemnified to its satisfaction.

SECTION 5.02. The Company will not issue, or permit to be issued, any Debentures hereunder in any manner other than in accordance with the provisions of this Trust Deed.

SECTION 5.03. The Company has good right and lawful authority to mortgage, convey, pledge and assign all of the property intended to be mortgaged, conveyed, pledged and assigned by it under this Trust Deed; and the said property is free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon or affecting the title thereto prior to this Trust Deed, except permitted liens. The Company hereby does and will for-

ever warrant and defend its title to the said property against the claims and demands of all persons whomsoever.

SECTION 5.04. The Company will permit any person designated by the Trustee in writing to visit and inspect any of the properties, corporate books and financial records of the Company and to discuss the affairs, finances and accounts of the Company with the principal officers of the Company, all at such reasonable times and as often as the Trustee may reasonably request.

SECTION 5.05. The Company will at all times keep or cause to be kept complete books of record and account in accordance with generally accepted accounting principles consistently applied.

SECTION 5.06. The Company will:

(a) promptly after the execution and delivery of this Trust Deed deliver to the Trustee (to the extent recorded and/or filed) a recorded counterpart of this Trust Deed or a short form of such instrument, or receipts therefor and/or for filing thereof, or other evidence of such recording and/or filing from the proper recording and/or filing officers;

(b) cause this Trust Deed and all deeds of trust and instruments supplemental thereto, or short forms of such instruments, to be kept recorded and filed in such manner and in such offices in all such domestic and foreign jurisdictions as may be required by law in order to make effective the lien intended to be created hereby and to maintain the lien hereof and will pay all taxes and fees incident thereto, provided that no recording or filing shall be required in respect of future Leases;

(c) furnish to the Trustee within 90 to 120 days after the close of each calendar year commencing with the year 1972, an opinion of counsel either stating that in the opinion of such counsel all necessary action has been taken with respect to the re-recording and re-filing of such instruments in all offices where it is necessary (or in the opinion of counsel giving such opinion, advisable) so to re-record and re-file in order to maintain the lien hereof, and reciting the details of such action, or stating that in the opinion of such counsel no such re-recording or re-filing is necessary;

(d) promptly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any of its property, real, personal

or mixed, or upon any part thereof, and all claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon its property, provided, however, that the Company shall not be **required** to pay any such tax, assessment, charge, levy or claim if the validity thereof shall currently be contested in good faith by appropriate proceedings and the lien hereof shall not, in the opinion of counsel, be materially and adversely affected;

(e) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and franchise and use its best efforts to preserve and keep in full force and effect its rights, permits and licenses to do business, provided, however, that nothing in this subparagraph (e) shall prevent the abandonment of any rights, permits or licenses to do business of the Company if such abandonment is not disadvantageous in any material respect to any Debentureholder;

(f) promptly pay and discharge or cause to be paid and discharged all its obligations when due, provided, however, that the Company shall not be required to pay or discharge any such obligation if the validity thereof shall currently be contested in good faith by appropriate proceedings and the lien hereof shall not, in the opinion of Counsel, be materially and adversely affected;

(g) comply with all of the terms and provisions of all contracts and agreements at the time constituting a part of the trust estate, and will allow no default on the part of the Company to exist thereunder, and will at all times do all things necessary to compel performance by other parties thereto of all obligations, covenants and agreements to be performed by such parties unless such compulsion, in the reasonable judgment of the Company, would not be in the best interests of the Company's business, and will not permit any supplement thereto or amendment or modification thereof provided that the Company may alter, amend, extend or otherwise deal with existing or future leases or subleases of Mortgaged Equipment in such manner as is required in the ordinary course of its business;

(h) maintain and keep its properties (including its properties included in the mortgaged premises), or cause the same to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will make or cause to be made all necessary repairs, renewals and replacements, provided that the Com-



pany may from time to time, for the purpose of meeting transportation requirements of present and future lessees, make or cause to be made changes or alterations in design, structure and equipment of any railroad cars included in the mortgaged premises, all at the expense of the Company, but only as and to the extent that no material impairment in actual fair market value shall result therefrom; and

(i) comply in all respects with the laws of all jurisdictions in which the Mortgaged Equipment may be operated and with all lawful rules, regulations and orders of all governmental bodies having power to regulate or supervise any of the Mortgaged Equipment, and make or cause to be made all repairs and changes in the Mortgaged Equipment necessary in order to make the Mortgaged Equipment acceptable for interchange in accordance with general railroad rules and regulations, provided, however, that the Company may in good faith contest the validity of any such law, rule, regulation or order or the application thereof to the Mortgaged Equipment or any part thereof in any reasonable manner which will have no material adverse effects on the rights or interests of the Trustee or of the Debentureholders.

**SECTION 5.07. The Company will not:**

(a) create, assume or suffer to exist any deed of trust, mortgage, pledge, encumbrance, lien or charge of any kind except permitted liens, Trust and other than leases or purchase options permitted by the provision of Section 5.10 upon any of its property or assets included in the mortgaged premises; or

(b) merge into or consolidate with another corporation or sell, lease, transfer or otherwise dispose of all or any substantial part of its property or assets, unless (i) the corporation formed by or surviving any such merger or consolidation or to which such sale, lease, transfer or disposition shall have been made shall be a corporation organized under the laws of Canada or any Province thereof, and (ii) the Company shall remain bound with respect to, and such corporation shall have expressly assumed by supplemental deed of trust, the due and punctual payment of the principal of and interest on all of the Debentures and the due and punctual performance and observance of all the covenants and conditions of this Trust Deed.

SECTION 5.08. The Company shall keep in effect policies of insurance pursuant to which all railroad cars included in the Mortgaged Premises are insured against loss or damage, the risk of which is customarily insured by railroad companies, up to at least the replacement values of such cars as established by the Association of American Railroads, the aggregate of which replacement values will equal or exceed the fair value thereof as of the date of any determination. The Company shall cause all such insurance to be written by one or more insurance carriers of recognized responsibility and shall contain an agreement by such insurance carriers that such policies shall not be cancelled without at least 10 days prior written notice to the Trustee. The Company will deliver to the Trustee within 120 days after the close of each calendar year, and at such other reasonable times as the Trustee may request, an officer's certificate to the effect that during such calendar year this Section 5.08 was complied with.

In the event that any insurance required to be maintained by this Section 5.08 shall not be in effect, the Trustee may (but shall be under no obligation so to do) cause the Mortgaged Equipment to be insured in such manner as the Trustee shall deem advisable for the protection of the Debentureholders and may demand and recover from the Company all premiums paid on such insurance with interest on the amount thereof at the rate of 10% per annum. If the Trustee should insure the Mortgaged Equipment or any part thereof, any Mortgaged Equipment so insured shall in no event be released from the lien of this Indenture until repayment of all insurance premiums and interest thereon has been made to the Trustee.

SECTION 5.09. The Company agrees that, as soon as practicable after the original issuance of the Debentures pursuant to this Agreement, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of each railroad car included in the Mortgaged Equipment a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than seven-sixteenths of one inch in height:

**THIS CAR IS MORTGAGED TO MONTREAL TRUST COMPANY,  
TRUSTEE, UNDER A DULY RECORDED DEED OF TRUST AND  
MORTGAGE.**

Any railroad cars to be mortgaged under this Deed of Trust by Supplemental Deed of Trust shall also be so marked prior to or simultaneously with being so mortgaged. Such plates or marks shall be such as to be readily visible and

as to indicate plainly the Trustee's interest in each unit of the Mortgaged Equipment. Notwithstanding the foregoing, the Company shall not be required so to mark any car in service on the date hereof which is at such time marked by a legend indicating that it is subject to a duly recorded equipment trust, mortgage or other lien.

In case any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall forthwith cause the same to be restored or replaced in accordance with the requirements contained in the first sentence of this Section 5.09. The Company shall not change or permit to be changed the numbers of any of the Mortgaged Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded in like manner as this Indenture.

SECTION 5.10. Except as provided in this Section 5.10, the Company will not sell, assign, transfer, lease, permit sublease, bail or in any fashion entrust to any third party the Mortgaged Equipment or any part thereof.

Certain units of the Mortgaged Equipment are presently leased to various shippers and railroads which are not affiliates of the Company, all pursuant to the Leases referred to in Section 3.01 (a). In addition to such Leases, the Company and any of its affiliates shall be entitled to (a) lease or sublease Mortgaged Equipment, (b) otherwise furnish Mortgaged Equipment or any unit thereof to railroad companies for use upon the lines of railroads owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to persons other than railroad companies for use in their business, and (c) include in any such lease, sublease or other instrument or contract pursuant to which such Mortgaged Equipment shall be leased, subleased or furnished a grant by the Company of an option to purchase such Equipment; provided, however, every such lease, sublease or other instrument or contract (including any such option); provided, however, every lease or other instrument or contract pursuant to which such Mortgaged Equipment shall be leased or furnished shall expressly subject the rights of the lessee or other party to the rights of the Trustee and Debentureholders under this Trust Deed.

SECTION 5.11. The Company covenants that it will pay to the Trustee reasonable remuneration for its services hereunder and will reimburse the Trustee for all moneys properly expended or advanced by the Trustee in the administration or execution of the trusts hereby created both before any default

hereunder and thereafter until all duties of the Trustee under the trusts hereof shall be finally and fully performed; and the Trustee's remuneration and the moneys so expended or advanced, and any interest thereon, shall be secured hereby, and the Trustee shall have a lien therefor upon the Mortgaged Equipment and the proceeds thereof in priority to principal and interest of the Debentures secured hereby, and such moneys shall be payable out of any funds coming into the possession of the Trustee under the terms hereof.

SECTION 5.12. The Company covenants that from time to time it will do, execute, acknowledge, deliver, file and record, or cause to be done, executed, acknowledged, delivered, filed and recorded, all and every such further acts, deeds, grants, releases, conveyances, assignments, mortgages, pledges, transfers and assurances as shall be necessary, or as the Trustee shall reasonably require, for the better granting, releasing, conveying, confirming, assigning, mortgaging, pledging, transferring and assuring unto the Trustee of all the property, rights and interests hereby granted, bargained, sold, aliened, remised, conveyed, confirmed, warranted, assigned, mortgaged, pledged, transferred, delivered or set over or intended so to be, or which the Company may become bound to grant, bargain, sell, alien, remise, release, convey, confirm, warrant, assign, mortgage, transfer, deliver or set over to or pledge with, the Trustee.

SECTION 5.13. The Company covenants forthwith to give written notice to the Trustee of any event of default hereunder and of any failure to comply with any covenant of the Company in this Trust Deed.

## ARTICLE SIX

### DEFAULT AND ENFORCEMENT

SECTION 6.01. The security hereby constituted shall become enforceable, subject to the terms herein contained, in each and every of the events following (herein sometimes referred to as "events of default"):

(a) if the Company makes default in payment of the principal of any Debenture secured hereby when the same becomes due under any provision hereof or of the Debentures;

(b) if an order shall be made or an effective resolution be passed for the winding up or liquidation of the Company, except in the course

of carrying out or pursuant to a transaction in respect of which the conditions of Section 5.07(b) are duly observed and performed;

(c) if the Company shall make a general assignment for the benefit of its creditors, or shall be declared bankrupt, or if a custodian or a sequestrator or a receiver and manager or any other officer with similar powers shall be appointed of the Company or of the Mortgaged Equipment or any part thereof which is, in the opinion of the Trustee, a substantial part thereof;

(d) if an encumbrancer shall take possession of the Mortgaged Equipment or any part thereof which is, in the opinion of the Trustee, a substantial part thereof or if a distress or execution or any similar process be levied or enforced thereagainst and remain unsatisfied for such period as would permit such property or such part thereof to be sold thereunder;

(e) if the Company shall fail to carry out or observe any other covenant or condition herein contained on its part to be observed and performed and, after notice in writing has been given by the Trustee to the Company specifying such default and requiring the Company to put an end to the same, the Company shall fail to make good such default within a period of ninety days, unless the Trustee (having regard to the subject matter of the neglect or non-observance) shall have agreed to a longer period, and in such event, within the period agreed to by the Trustee.

SECTION 6.02. In case the security hereby constituted shall become enforceable as hereinbefore provided, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Debentures shall, by notice in writing to the Company declare the principal and any interest of all Debentures then outstanding and other moneys secured hereby to be due and payable and the same shall forthwith become immediately due and payable to the Trustee, anything therein or herein to the contrary notwithstanding, and the Company shall forthwith pay to the Trustee for the benefit of the Debentureholders the principal of and accrued and unpaid interest on such Debentures and all other moneys secured hereby. Any and all moneys so collected by the Trustee shall be applied by it as hereinafter in Section 6.04 provided.

SECTION 6.03. In case the security hereby constituted shall become enforceable as hereinbefore provided, the Trustee may by its agents take possession of all or any part of the Mortgaged Equipment and retain all payments which up to that time have been made on account of rental for the Mortgaged Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid lease rentals, per diem, mileage or other charges of any kind earned by the Mortgaged Equipment or any part thereof, and, subject only to the rights of lessees of Mortgaged Equipment under leases referred to in Section 3.01(a), may lease the Mortgaged Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount payable by the Company as provided for in Section 6.02 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place, in such manner and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Mortgaged Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or lease or sale of the Mortgaged Equipment, the Company shall cease to have any rights or remedies in respect of the Mortgaged Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Mortgaged Equipment or any of it shall, in case of the happening of any such event of default and such taking possession, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Mortgaged Equipment or any of it or any cause or right of action at law or in equity in respect of the Mortgaged Equipment against the Trustee or the holders of Debentures hereunder. The holders of a majority in principal amount of the then outstanding Debentures shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

Upon any sale, the receipt of the Trustee for the purchase money shall be a sufficient discharge to any purchaser of the Mortgaged Equipment or any part thereof sold as aforesaid; and no such purchaser or his representatives, grantees and/or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Trust Deed, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SECTION 6.04. If, in case the security hereby constituted shall become enforceable as hereinbefore provided, the Trustee shall exercise any of the powers conferred upon it by this Article, all payments made by the Company to the Trustee hereunder after such event of default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Mortgaged Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof, shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions hereof and (b) of the interest then due, at the rate borne by the Debentures, and of the principal of all the outstanding Debentures, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal and interest.

After all such payments shall have been made in full, the title to any of the Mortgaged Equipment remaining unsold shall be conveyed by the Trustee to the Company along with any Leases and rents falling due thereunder which have been deposited with the Trustee free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees, forthwith and without notice or demand, to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 6.05. If an event of default shall happen and be continuing, then, and in every such case, the Trustee may, whether or not the Trustee shall concurrently exercise any other remedy provided for in this Article Six or by law, terminate the agency provided for in Section 3.04(a) and

collect the rentals, proceeds and other moneys assigned pursuant to Section 3.01(b). The Trustee shall apply all funds so received by it to pay all proper costs and expenses of so collecting such rentals, proceeds and other moneys, including reasonable compensation to the Trustee, its agents and attorneys, and all charges of the Trustee hereunder, and apply the remainder of the moneys so received by it in the manner provided in the first paragraph of Section 6.04.

Whenever all that is due upon such interest installments and upon the principal of such Debentures shall have been paid and all defaults made good, the Trustee shall surrender to the Company any remaining funds so collected and held by it and shall reinstate the agency provided for in Section 3.04(a). The same right to terminate such agency and proceed in accordance with the provisions of this Section 6.05, however, shall exist upon any subsequent default.

SECTION 6.06. If at any time after the principal of all the Debentures shall have been declared and have become due and payable as in Section 6.02 provided, all arrears of principal and interest of the Debentures, the expenses of the Trustee occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder shall be paid by the Company before any sale or lease by the Trustee of any of the Mortgaged Equipment and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of at least 66 $\frac{2}{3}$ % in principal amount of the Debentures then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.07. No taking of possession of the Mortgaged Equipment by the Trustee, or any lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Mortgaged Equipment on the part of the Trustee or on the part of the holder of any Debenture, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder. The Company hereby waives presentation and demand in respect of any of the Debentures and waives notice of presentation, of demand and of any default



in the payment of the principal of and interest on the Debentures. The Trustee may at any time upon notice in writing to the Company apply to any court of competent jurisdiction for instructions as to the application and distribution of the property held by it.

SECTION 6.08. In case the Trustee shall demand possession of the Mortgaged Equipment pursuant to the provisions hereof, and shall reasonably designate a point or points for the delivery of the Mortgaged Equipment to it, the Company, subject to the rights of lessees of the Mortgaged Equipment under Leases referred to in Section 3.01(a), shall at its own expense forthwith and in the usual manner cause the Mortgaged Equipment to be moved to such point or points as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Mortgaged Equipment on any of the lines of railroads or premises of the Company until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish without charge for rent or storage the necessary facilities at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Trust Deed and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 6.09. The Trustee is hereby irrevocably appointed special agent and representative of the holders of the Debentures and vested with full power in their behalf to effect and enforce this Trust Deed for their benefit as provided herein; but anything in this Trust Deed contained to the contrary notwithstanding, the holders of at least a majority in principal amount of the Debentures then outstanding shall have the right from time to time, if they so elect and manifest such election by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct and control the method and place of conducting any and all proceedings for any sale of the Mortgaged Equipment, or any adjournment thereof, or for the appointment of a receiver or for any other action or proceeding hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Trust Deed, but they shall have no right to involve the Trustee in any personal liability of any kind to anybody without first and from time to time indemnifying it to its satisfaction.

SECTION 6.10. The remedies in this Trust Deed provided in favor of the Trustee and the holders of the Debentures, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

## ARTICLE SEVEN

### CONCERNING THE TRUSTEE

SECTION 7.01. The Trustee shall cause to be kept at its office in Toronto, Canada, books for the registration and transfer of the Debentures, and upon presentation for such purpose the Trustee will transfer and register or cause to be transferred and registered as hereinbefore provided, and under such reasonable regulations as it may prescribe, any of the Debentures.

SECTION 7.02. The Trustee hereby accepts the trusts imposed upon it by this Trust Deed subject to the terms hereof, including the following express terms and conditions:

(a) The Trustee assumes no liability for anything other than its own wilful misconduct or gross negligence. The Trustee assumes no responsibility for the payment of the Debentures unless furnished with funds for that purpose. It assumes no responsibility for the sufficiency of insurance policies, adequacy of insurance, or responsibility of insurers. It shall be required to undertake no act or duty in the way of taking care of, or taking possession of, the Mortgaged Equipment until secured to its satisfaction against all liability and expense. No duty of insurance or of repairs or of the protection of any of the Mortgaged Equipment is incumbent upon it, nor shall it be responsible for the filing, registration, recording, refiling or re-recording of this Trust Deed or of any agreement supplemental hereto or amendatory hereof, nor to ascertain whether any taxes, licenses or assessments have been imposed or remain unpaid upon or against the Mortgaged Equipment or any part thereof; and the Trustee may issue and deliver Debentures in advance of such registration, filing or recording.

(b) The Trustee shall be protected and incur no liability in acting under any request, resolution, certificate or opinion of counsel provided for herein which it deems genuine and sufficient.

(c) The Trustee may consult with Counsel (who may, in cases deemed by the Trustee, in its reasonable discretion, to be appropriate, be counsel for the Company) in respect to any matter pertaining to the trusts hereby created, or the execution thereof, and shall be fully protected for any act or failure to act hereunder, reasonably done or omitted by it in good faith in accordance with the opinion of Counsel, and such act or omission shall be conclusive upon the parties hereto and upon all holders of Debentures.

(d) The Trustee shall in no way be liable for any covenant herein agreed to be performed by the Company, nor for any act or thing done or omitted to be done by the Company under the provisions hereof.

(e) The Trustee shall not be responsible for any recital, statement or representation herein or in the Debentures contained, or in any paper furnished or filed with the Trustee pursuant to the provisions hereof, and it shall be conclusively presumed that all such recitals, statements and representations are not made by the Trustee.

(f) The Trustee shall not be responsible in any manner whatsoever for the validity or legal effect of this Trust Deed or of the Debentures or for the sufficiency of title to the Mortgaged Equipment or for the validity of or sufficiency of title to the Leases.

(g) The Trustee shall not in any event be responsible for the act of any agent, provided only such agent is selected with reasonable care.

(h) The Trustee shall be entitled to reasonable compensation from the Company for all services rendered by it in the execution of the trust hereby created (which shall not be limited to the compensation for trustees provided by law). The Trustee shall be reimbursed by the Company for any expenditures made by the Trustee on account of any of the provisions or requirements hereunder, including an amount equal to any expenses incurred or loss of principal (including interest accrued thereon at the time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investment Securities, or for any liability or damages which the Trustee may incur or sustain and such compensation and expenditures, as well as all its reasonable expenses, including the compensation and reasonable expenditure of agents, attorneys in fact and legal counsel and attorneys, incurred or actually disbursed, and, except in respect of any liability, damages or expenses, including counsel fees,

arising from or as a result of the Trustee's wilful misconduct or gross negligence and, subject to the foregoing exception, any and all sums advanced and paid out by the Trustee out of its own funds or funds advanced by holders of Debentures shall be withheld by the Trustee out of the moneys paid to it as rentals under the terms hereof and applied in reimbursement of any such advances.

(i) Anything herein contained to the contrary notwithstanding, the Trustee shall be under no obligation to take any action for the execution or enforcement of any of the trusts hereby created nor for the enforcement of any right hereunder unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Debentures and upon being furnished with indemnity satisfactory to it against expense and liability with respect thereto and also furnished with proof satisfactory to it as to the ownership of the Debentures in respect of which any notice or request may be made; but neither any such request nor this provision therefor shall affect any discretion herein elsewhere specifically given to the Trustee to determine what action it shall take in respect of any such default, or to take action without request.

(j) No holder of any Debenture issued hereunder shall have any right to institute any suit, action or proceeding for the execution and enforcement of the trust hereby created unless, after the aforesaid request in writing by the holders of not less than 25% in principal amount of the then outstanding Debentures shall have been made upon the Trustee, an agreement of indemnity satisfactory to it provided, and a reasonable time elapsed for action by the Trustee upon such request, the Trustee shall decline or fail to institute any proceedings pursuant hereto.

(k) The Trustee may, for all purposes other than payment of principal and any interest on Debentures, conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the Company or by the holders of at least 10% in principal amount of the Debentures then outstanding, which notice shall specify the default desired to be brought to the attention of the Trustee.

(l) The Trustee shall not incur any liability to anybody in acting upon any notice, consent, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

(m) The Company, or the holders of at least 10% in principal amount of the outstanding Debentures, or either of them, may from time to time examine the books and accounts of the Trustee relating to said Debentures and to this Trust Deed and to the acts of the Trustee hereunder.

(n) The Trustee shall not, nor shall its agents or attorneys, by reason of anything herein contained, any entry into possession of the mortgaged premises or any part thereof, or the collection or receipts of any rents or other moneys payable under any of the Leases, (i) be liable for the performance of any of the obligations of the Company under or in respect of any of the Leases, or (ii) become or be deemed to be a mortgagee in possession, or (iii) be liable to account for anything except actual receipts, or (iv) be under any obligation to take any action or exercise any remedy (including the collection of rents or other moneys or the enforcement of any obligations under any of the Leases), or (v) be liable for any loss or realization for any default or omission for which a mortgagee in possession might be liable; save in each case such as may be caused by its own negligence or wilful misconduct.

SECTION 7.03. The Trustee may resign and be discharged from the trusts created by this Trust Deed, by giving to the Company and to the registered holders of the Debentures then outstanding notice in writing of such resignation, specifying a date when such resignation shall take effect. If desired by the Trustee, such notice may be given to the holders of the Debentures by publication of the notice at least once in each of two successive calendar weeks prior to the date specified in such notice, in one daily newspaper published in Toronto, Canada, and in one daily newspaper published in Chicago, Illinois, United States of America. Such resignation shall take effect on the date specified in such notice (which date shall not be less than 30 days after the giving or first publication of such notice) unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee. Upon the taking effect of such resignation, the Trustee (or any trustee so resigning) shall, without further act on its part, be completely relieved from any and all obligation or responsibility under or with respect to this Trust Deed, the Debentures or the Mortgaged Equipment.

Any trustee hereunder may be removed at any time by instrument in

writing filed with the Trustee and executed by the holders of at least 66⅔% in principal amount of the Debentures.

SECTION 7.04. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of at least a majority in principal amount of the Debentures at the time outstanding, by an instrument or concurrent instruments signed by such Debentureholders or their attorneys in fact duly authorized and filed with such successor trustee; but until a new trustee shall be appointed by said Debentureholders as herein authorized, the Company, by an instrument executed under its corporate seal, may appoint a trustee to fill or avoid such vacancy. Every such successor trustee, whether appointed by the Debentureholders or by the Company, shall always be a corporation authorized to accept and execute trusts and having an office in Toronto, Canada, and in each case having a capital stock, reserve fund and undivided profits aggregating at least \$20,000,000. After any such appointment by the Company, it shall cause notice of such appointment to be published once a week in each of two successive weeks in one daily newspaper published in Toronto, Canada, and in one daily newspaper published in Chicago, Illinois, United States of America, but any new trustee so appointed by the Company shall immediately, and without further act, be superseded by a trustee appointed, in the manner above provided, by the holders of at least a majority in principal amount of the Debentures.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring trustee an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with title to the trust estate, and with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein, and the trustee ceasing to act shall, on the written request of such successor trustee, assign and transfer the trust estate including the Mortgaged Equipment and moneys held by the Trustee hereunder or cause the trust estate to be assigned and transferred to the successor trustee, upon payment of all amounts owing to it hereunder. Upon request of such successor trustee, the Company shall execute and deliver such instruments of further assurance as may reasonably be required for more fully and certainly vesting in and confirming to such successor trustee all right, title and interest of the predecessor trustee in and to the trust estate and such rights, powers, trusts,

duties and obligations. All instruments herein provided for shall be at the cost of the Company.

Any banking corporation or trust company resulting from any merger or consolidation to which the Trustee, or any successor to it, shall be a party shall be the successor trustee under this Trust Deed without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

## ARTICLE EIGHT

### MISCELLANEOUS

SECTION 8.01. (a) Upon proof being given to the reasonable satisfaction of the Trustee that all the Debentures and any interest thereon and other moneys hereby secured have been paid off or satisfied, such payment has been duly and effectually provided for by payment to the Trustee or otherwise, and upon payment of all costs, charges and expenses properly incurred by the Trustee in relation to these presents and all interest thereon and the remuneration of the Trustee, or upon provision satisfactory to the Trustee being made therefor, the Trustee shall, at the request and at the expense of the Company, execute and deliver to the Company such deeds or other instruments as shall be requisite to evidence the satisfaction and discharge of the security hereby created, to release or reconvey the Mortgaged Equipment freed and discharged from the trusts and provisions herein contained and to release the Company from its covenants herein contained except those relating to the indemnification of the Trustee.

(b) It is hereby declared and agreed that no purchaser from the Company or its successors and assigns shall be obliged to inquire into the necessity, expediency, authority or regularity of or for any such deeds or other instruments of release or reconveyance or the application of any moneys or securities provided or set aside for the payment of any outstanding Debenture or interest thereon.

SECTION 8.02. From time to time the Company and the Trustee may, and they shall if requested so to do by the holders of at least  $66\frac{2}{3}\%$  in principal amount of the then outstanding Debentures, execute and deliver by their proper officers, deeds or instruments supplemental hereto, which

thereafter shall form part hereof, for any one or more of the following purposes:

(a) to describe specifically and subject to the lien hereof cars furnished pursuant to the provisions of Section 4.01 or Section 4.02;

(b) to evidence the succession of successor companies to the Company and the covenants of and obligations assumed by such successor companies in accordance with the provisions of Section 5.07(b);

(c) to add to or alter the provisions hereof in respect of the registration and transfer of Debentures, to make provision for the issue of Debentures of denominations other than those herein provided for and for the exchange of Debentures of different denominations, and to make any modification in the form of the Debentures which does not affect the substance thereof; and

(d) for any other purpose not inconsistent with the terms of this Trust Deed, including the correction or rectification of any ambiguities, defective provisions, errors or omissions herein, provided that in the opinion of the Trustee the rights of the Trustee or of the Debentureholders are in no way prejudiced thereby.

SECTION 8.03 No recourse under any obligation, covenant or agreement of this Trust Deed shall be had against any stockholder, officer or director of the Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this Trust Deed is solely a corporate obligation, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors of the Company, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Trust Deed, or implied therefrom, and that any and all personal liability, either at law or in equity, or otherwise, of every stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Trust Deed and the issue and delivery of the Debentures.

SECTION 8.04. Any request or other instrument required by this Trust Deed to be signed or executed by holders of Debentures may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person, or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any



person of Debentures, shall be sufficient for any purpose hereof, and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument, if made in the following manner, viz:

(a) the fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state or jurisdiction where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness to such execution; and

(b) the ownership of Debentures shall be determined by the books of the Trustee. The Trustee may presume the continuance of any such holding unless and until it receives proof satisfactory to it to the contrary.

SECTION 8.05. Nothing in this Trust Deed, express or implied, is intended or shall be construed to confer upon, or to give to, any person, firm or corporation other than the parties hereto and the holders of the Debentures, any right, remedy or claim under or by reason of this Trust Deed, or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements herein contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Debentures.

SECTION 8.06. This Trust Deed may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

SECTION 8.07. The Company, in conformity with the laws of the Province of Quebec, has signed and executed or will sign and execute in notarial form a Trust Deed of Hypothec, Mortgage and Pledge mortgaging, hypothecating, pledging, charging and ceding the Mortgaged Equipment to the Trustee, such Trust Deed of Hypothec, Mortgage and Pledge being substantially in the tenor and of the same effect as this Trust Deed; the said Trust Deed of Hypothec, Mortgage and Pledge and this Trust Deed are to be read as one instrument.

SECTION 8.08. This Trust Deed shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Company and the Trustee, pursuant to due corporate authority, have caused this Trust Deed to be signed in their respective corporate names by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed, as of the day and year first above written.

NORTH AMERICAN CAR (CANADA)  
LIMITED

By 

Vice President

By 

Assistant Secretary

(CORPORATE SEAL)

MONTREAL TRUST COMPANY

Trustee

By 

Senior Corporate Trust Officer

J. H. Whiteley, Manager, Corporate Trusts and Bond Division

By 

Corporate Trust Consultant

W. John Common, Corporate Trust Officer

(CORPORATE SEAL)

STATE OF ILLINOIS  
COUNTY OF COOK

To Wit:

IN THE MATTER OF registration of an Indenture dated as of the 1st day of July, 1971 and made between North American Car (Canada) Limited and Montreal Trust Company, as Trustee, for the purpose of securing Demand Equipment Debentures of North American Car (Canada) Limited.

I, Robert B. Oppenheimer, of the City of Chicago, in the State of Illinois, MAKE OATH AND SAY THAT:

1. I am an officer holding the office of Vice President of North American Car (Canada) Limited, the mortgagor or assignor named in the annexed instrument containing a mortgage charge or assignment made by the said North American Car (Canada) Limited to Montreal Trust Company, and am aware of the circumstances connected with the transaction and have a personal knowledge of the facts herein deposed to.

2. The said instrument was executed by North American Car (Canada) Limited at the City of Chicago, in the State of Illinois, on the 2nd day of July, 1971.

SWORN before me at the  
City of Chicago in the  
State of Illinois,  
This 2nd day of July,  
1971.

*Robert B. Oppenheimer*

*Allen M. Gray*  
A Notary for the State  
of Illinois.

My Commission Expires  
MY COMMISSION EXPIRES JULY 2, 1974

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
CANADA

TO WIT:

IN THE MATTER OF registration of an Indenture dated as of the 1st day of July, 1971 and made between North American Car (Canada) Limited and Montreal Trust Company, as Trustee, for the purpose of securing Demand Equipment Debentures of North American Car (Canada) Limited.

I, **J. H. Whiteley**, of the City of La Salle, in the Province of Quebec, MAKE OATH AND SAY THAT:

1. I am an officer, Corporate Trusts Division of Montreal Trust Company, the mortgagee, trustee or grantee named in the annexed indenture made by North American Car (Canada) Limited to the said Montreal Trust Company, and am aware of the circumstances connected with the transaction and have a personal knowledge of the facts herein deposed to.
2. The said indenture being the instrument containing the mortgage charge or assignment was executed in good faith and for the purpose of securing payment of the Demand Equipment Debentures referred to therein and not for the mere purpose of protecting the chattels or book debts therein mentioned against the creditors of the mortgagor or assignor or preventing such creditors from obtaining payment of any claim against the mortgagor or assignor.

SWORN before me at the  
City of Montreal in the  
Province of Quebec,  
This 5<sup>th</sup> day of July,  
1971

A Notary for the Province  
of Quebec.

STATE OF ILLINOIS, }  
COUNTY OF COOK, } ss.:

On this 2nd day of July, 1971, before me personally appeared ROBERT B. OPPENHEIMER, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR (CANADA) LIMITED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Eileen M. Strom

Notary Public

My Commission Expires

MY COMMISSION EXPIRES JULY 2, 1974

CANADA  
PROVINCE OF QUEBEC } ss.:  
DISTRICT OF MONTREAL }

On this                      day of July, 1971, before me personally appeared  
**J. H. Whiteley**, to me personally known, who, being by me duly  
sworn, says that he is an officer, CORPORATE TRUSTS DIVISION, of MONTREAL  
TRUST COMPANY, that one of the seals affixed to the foregoing instrument is  
the corporate seal of said corporation and that said instrument was signed  
and sealed on behalf of said corporation by authority of its Board of Direc-  
tors, and he acknowledged that the execution of the foregoing instrument was  
the free act and deed of said corporation.

  
Notary Public

My Commission Expires *on death*.